IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/03/2003

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THE HONOURABLE Mr. JUSTICE P.K. MISRA

W.P.No.4392 of 2003
and
W.P.M.P.Nos.9049, 5520 & 5521 of 2003

1. K. Thayappan
2. S. Somasundaram
3. Mayandi Thevar
4. Smt. Arulselvi
5. Sethuramalingam
6. Smt. Kalpana
7. Murugan
8. Lakshmanaperumal .... Petitioners

-Vs-

1. The Block Development Officer,
Village Panchayat
Ambasamudram, Tirunelveli District

2. The President,
Panchayat Board, Sevanthipuram,
Ambasamudram Taluk. .... Respondents

PETITION under Article 226 of The Constitution of India
praying for the issue of a writ of certiorarified mandamus calling for the records relating to the order in A3.3551/2000 dated 12.12.2001 passed by the first respondent and quash the same thereby forbearing the respondents from implementing the said order.

!For Petitioner : Mr. P. Peppin Fernando

^For Respondents : Mr. R. Kanniappan, G.A.

:O R D E R

Heard the learned counsel appearing for the parties.
2. The petitioners (eight Cable Operators) have challenged the notice dated 12.12.2001. such notice appears to be a communication of the Block Development Officer addressed to the President of the Panchayat Board, the second respondent herein. A copy of such letter has been endorsed to the Cable T.V. Operaters. In the said letter, direction was issued to second

respondent to collect the arrears of Cable T. V. Fees amounting to Rs.4,14,800/-.

3. It is the contention of the petitioners that the liability of the petitioners have been determined without following the procedure contemplated under Tamilnadu Entertainment Tax (Levy and Collection of Tax for Connection of Television Exhibition) Rules 2000 (hereinafter called "Rules"). Rule 6 of the aforesaid Rules is as follows:

"Filing of Returns by the Proprietors- (1) Every Proprietor of television exhibition shall submit a return in Form III appended to these Rules showing the total household connections given each month and the amount to be remitted to the Village Panchayat. The above return for each month shall be submitted to the Entertainments Tax Officer on or before the 10th day of the succeeding month. Along with the return he shall also submit proof of payment of tax payable under Section 4E of the Act for the month to which the return relates.
(2) If no return is submitted by the proprietor within the time specified in sub-rule(1) or if the return submitted by him appears to be incorrect or incomplete, the Entertainments Tax Officer, after making such enquiry as he considers necessary, determine the tax due under Section 4-E of the Act to the best of his judgment and finally assess under single order, the tax payable for the month to which the return relates:
Provided, that before taking action, the Entertainments Tax Officer shall issue a notice to the proprietor, calling upon him to produce his accounts, registers, records and other documents at the time and place to be specified in the notice and to prove the correctness and completeness of the return, where one ha s submitted or to prove that he is not liable to submit any return and allow him a reasonable opportunity of being heard.
(3) If the Entertainments Tax Officer finds, after the scrutiny of the accounts and records produced by the proprietor and after taking into account all the relevant materials gathered, that the tax payable by the proprietor is higher than the amount of tax admitted in the return, he shall after giving an opportunity to the proprietor of being heard, assess the tax payable and serve upon the proprietor the order of assessment:
Provided that if the registration is made with other local authority and connection is given to a Village Panchayat area, the proprietor of the television exhibition shall submit a monthly return to the concerned Village Panchayat where house connection is given, by paying the tax fixed by the Village Panchayat for such exhibition."

4. In the present case, the impugned letter refers to report submitted by the President. The basis of making such a report is not known. When a particular procedure has been prescribed under the Rules to determine the liability, it is expected that such Rule should be followed.

5. It has been submitted on behalf of the respondents that as a matter of fact, the petitioners have not submitted any returns, which are required tobe filed under the aforesaid Rules. The learned counsel for the respondents further submitted that in fact the petitioners have filed a suit in O.S.No.12 of 2003 on the file of District Munsif, Ambasamudram.

6. The learned counsel for the petitioners has submitted that since subsequent to the filing of the suit, the present writ petition has been filed, the present petitioners shall take steps to withdraw the suit within a period of four weeks from today. In view of such statement, I am proceeding to decide the present matter.

7. Rule 6, which has already been extracted clearly indicates that it is the duty of the proprietor to submit the returns in Form III and the amount has to be remitted to the Village Panchayat. The return is thereafter to be submitted to the Entertainment Tax Officer along with proof of payment of tax payable under Section 4E of the Tamilnadu Entertainment Tax Act. After submission of return or where no return is submitted, the Entertainment Tax Officer is required to determine the tax due under Section 4E of the Act after making such enquiry as is considered necessary and pass an order of assessment. The proviso to Rule 6 (2) makes it clear that before taking any action, the Entertainment Tax Officer is required to issue notice to the proprietor calling upon the proprietor to produce his accounts, registers, records and other documents. Thereafter, the Entertainment Tax Officer is required to assess the tax payable under Rule 6(3). The Proviso to Rule 6(3) makes it clear that if the registration is made with other local authority and connection is given to Village Panchayat area, the proprietor is required to submit a monthly return to the concerned Village Panchayat.

8. Keeping in view the aforesaid scheme, in the peculiar facts and circumstances of the present case, I dispose of the writ petition with the following directions:

i) The petitioners should submit returns for the entire period till the end of February 2003 within a period of four weeks from today;

ii) the petitioners should deposit a sum of Rs.6,000/- each within the aforesaid period. Thereafter, the matter shall be finalized in accordance with the provisions contemplated under Rule 6 (2) including the Proviso and Rule 6(3) by giving opportunity as contemplated in the Rules. It goes without saying that if the petitioners would be aggrieved by any of the further action, it would be open to the petitioners to file an appeal in accordance with law.

iii) The petitioners shall take steps to withdraw the suit within a period of four weeks from today.

9. Subject to the aforesaid observation, the writ petition is disposed of. No costs. Consequently, W.P.M.P.Nos.9049, 5520 & 5521 of 2 003 are closed.

Index:Yes
Internet:Yes

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To
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